

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

BRENDA SUE DRAYTON,

Petitioner,

Case Number: 08-CV-13490

v.

HONORABLE PAUL D. BORMAN

CLARICE STOVALL,

Respondent.

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**OPINION AND ORDER DENYING CERTIFICATE OF APPEALABILITY  
AND DENYING PETITIONER’S APPLICATION TO PROCEED WITH  
AN APPEAL WITHOUT PREPAYMENT OF FEES AND COSTS**

Petitioner Brenda Sue Drayton filed a *pro se* petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254. On August 28, 2008, the Court issued an Order of Summary Dismissal. Petitioner has filed a Notice of Appeal. Thus, the Court must determine whether Petitioner is entitled to a certificate of appealability (COA). *See Castro v. United States*, 310 F.3d 900, 901-02 (6<sup>th</sup> Cir. 2002) (holding that “a district judge must issue or deny a COA if an applicant files a notice of appeal” without awaiting the filing of an application for a certificate of appealability).

Before Petitioner can appeal the Court’s decision, a COA under 28 U.S.C. §§ 2254(c)(1)(A) and Fed. R. App. P. 22(b) must issue. When a habeas applicant seeks permission to initiate appellate review of the dismissal of a petition, a federal court should limit its examination to a threshold inquiry into the underlying merit of his claims. *Miller-El v. Cockrell*, 537 U.S. 322, 336-37 (2003). A COA may be issued “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The

substantial showing threshold is satisfied when a petitioner demonstrates “that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.”

*Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Petitioner presented a single claim for habeas corpus relief, that the trial court incorrectly scored offense variable 6. “[F]ederal habeas corpus relief does not lie for errors of state law.” *Estelle v. McGuire*, 502 U.S. 62, 67 (1991) (quoting *Lewis v. Jeffers*, 497 U.S. 764, 780 (1990)). “[A] claim that the trial court mis-scored offense variables in determining the state sentencing guidelines is not cognizable on habeas corpus review.” See *Adams v. Burt*, 471 F. Supp. 2d 835, 844 (E.D. Mich. 2007); see also *Cook v. Stegall*, 56 F. Supp. 2d 788, 797 (E.D. Mich. 1999) (same); *Thomas v. Foltz*, 654 F. Supp. 105, 106-07 (E.D. Mich. 1987) (same). Therefore, this Court held that habeas corpus relief was not available for Petitioner’s claim.

This Court holds that jurists of reason would not find the conclusion that the petition was meritless to be debatable or wrong. See *Slack*, 529 U.S. at 484. Therefore, Petitioner is not entitled to a COA.

Also before the Court is Petitioner’s Application to Proceed With an Appeal Without Prepayment of Fees and Costs. Federal Rule of Appellate Procedure 24(a)(1) provides that a party to a district-court action who desires to appeal *in forma pauperis* must file a motion in the district court. An appeal may not be taken *in forma pauperis* if the court determines that it is not taken in good faith. 28 U.S.C. § 1915(a)(3). “[T]he standard governing the issuance of a certificate of appealability is more demanding than the standard for determining whether an appeal is in good faith.” *U.S. v. Cahill-Masching*, 2002 WL 15701, \* 3 (N.D. Ill. Jan. 4, 2002). “[T]o determine that an appeal is in good faith, a court need only find that a reasonable person

could suppose that the appeal has some merit.” *Walker v. O’Brien*, 216 F.3d 626, 631 (7th Cir. 2000). The Court concludes that a reasonable person would not suppose that the appeal has some merit. The Court, therefore, shall deny the Application to Proceed With an Appeal Without Prepayment of Fees and Costs.

Accordingly, **IT IS ORDERED** that a certificate of appealability is **DENIED**.

**IT IS FURTHER ORDERED** that Petitioner’s Application to Proceed With an Appeal Without Prepayment of Fees and Costs is **DENIED**.

s/Paul D. Borman

PAUL D. BORMAN

UNITED STATES DISTRICT JUDGE

Dated: October 6, 2008

#### CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record by electronic means or U.S. Mail on October 6, 2008.

s/Denise Goodine

Case Manager